

RECEIVED

BEFORE THE

DOCKET COPY ORIGINAL MAY 19 1994

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of) GN Dkt. No. 93-252
Sections 3(n) and 332 of the)
Communications Act)
)
Regulatory Treatment of)
Mobile Services)

**PETITION OF WATERWAY COMMUNICATIONS SYSTEM, INC.
FOR CLARIFICATION AND/OR PARTIAL RECONSIDERATION**

Waterway Communications System, Inc. (WATERCOM),
respectfully herewith petitions the Federal Communications
Commission, pursuant to Section 405 of the Communications
Act and Section 1.106 of the Commission's regulations, for
clarification and/or partial reconsideration of the Second
Report and Order in GN Docket No. 93-252.^{1/}

WATERCOM requests Commission clarification/
reconsideration on two (2) elements of the Second Report and
Order. One issue concerns waiver of the statutory bar
against common carriers providing dispatch service, and the
second is a procedural consideration regarding cancellation
of tariffs.

Dispatch Service

Prior to the Omnibus Budget Reconciliation Act of 1993
(OBRA '93), Section 332 of the Communications Act, adopted

^{1/} 59 Fed. Reg. 18493 (Apr. 19, 1994).

No. of Copies rec'd
List ABCDE

78410

in 1982 concerning land mobile radio services, distinguished between private land mobile radio services and public land mobile radio services by allowing the former to render dispatch services while prohibiting the latter from said services. In OBRA '93, Congress broadened Section 332 of the Act from applying only to land mobile services to embrace all commercial mobile service providers; and in doing so, Congress restated the bar on rendering dispatch service in generic terms. The newly-enacted Section 332(c)(2) of the Act grandfathered the right of private and public land mobile radio service providers who were authorized under the previous version of Section 332 of the Act to render dispatch service, and it further empowered the Commission to "terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest."

As noted in the Comments of WATERCOM and others in this proceeding, maritime carriers also provide dispatch service. Prior to OBRA '93, Section 332 of the Act never had been interpreted as barring maritime carriers from rendering dispatch service. The expansion of Section 332 to embrace all commercial mobile service providers now raises an issue as to whether maritime commercial mobile service providers are subject to the dispatch ban.

The Commission has deferred consideration of the ban on dispatch service to a subsequent proceeding.^{2/} Inasmuch as Congressional intent was to preserve existing services, and further considering that the Commission exempted AMSC from the ban on dispatch service,^{3/} WATERCOM respectfully urges the Commission to clarify that the ban on dispatch service does not apply to commercial maritime service providers.

Tariff Forbearance

Second, the Commission has directed all interstate commercial mobile service providers to cancel their tariffs.^{4/} Pursuant to paragraph 20 of Section 1.1105 of the Commission's Rules, tariff filings require a \$490 filing fee. The Commission's Order does not address the payment of fees for the required cancellation of tariffs.^{5/}

Pursuant to Section 1.1112(a), the Commission has established a general exemption from filing fees for "Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional

^{2/} Second Report and Order at ¶ 105.

^{3/} Id.

^{4/} Id. at ¶¶ 178-179, 289.

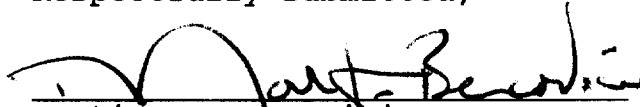
^{5/} Certain tariff filing requirements are waived; however, the ordering clause does not mention filing fees. See Second Report and Order at ¶ 289.

requirements of the Commission's rules ...". An issue thus arises whether Section 1.1112(a) covers the required filing of tariff cancellation supplements. Technically speaking, a tariff filing is not an "application," and a tariff is not an "existing authorization;" however, from a substantive and equitable standpoint, cancellation of a tariff to comply with the Commission's direction is no different than modifying a license to comply with a change of channelling, emission, power limitations or other modified rule provision.^{6/} It is difficult to conceive of the Commission having intended a distinction for fee purposes between applications to modify authorizations and tariffs or other filings, all submitted solely "to comply with new or additional requirements." Accordingly, WATERCOM requests that the Commission clarify, or otherwise modify, its Second Report and Order to exempt carriers from the payment of the tariff filing fee for compliance with the Commission's direction to cancel tariffs.

^{6/} Section 1.1112(a) does provide that a fee is due where a licensee, in addition to making the required change, requests another Commission action, or where a broadcast licensee seeks to upgrade its channel after a rulemaking. These situations, of course, entail discretionary actions by the licensee for its benefit, which is not the situation with regard to cancellation of tariffs.

WHEREFORE, THE PREMISES CONSIDERED, Waterway Communications System, Inc. respectfully urges the Federal Communications Commission to CLARIFY, or otherwise to RECONSIDER, its Second Report and Order in accordance with the foregoing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Martin W. Bercovici", is written over a horizontal line.

Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Attorney for **WATERWAY COMMUNICATIONS SYSTEM, INC.**

Due Date: May 19, 1994